

LEXOW'S LOOPHOLE FOR THE TRUSTS.

Monopolies' Foes Denounce His Report as a Scheme to Protect and Not to Destroy.

Cantor and Robbins Declare Interminable Delay Would Follow Throwing Investigation Into the Courts.

Democratic Senators Meet in Caucus, Rebuke McCarren and Repudiate His Solitary Stand in Favor of the Sugar Trust.

Robbins Sees No Trust Reforms.

Albany, N. Y., March 9.

Editor New York Journal:

I earnestly hope that Mr. Lexow will introduce a bill or bills which will remedy the trust evil. Judging by his report, he has no such intention. I was opposed to the appointment of an investigating committee six weeks ago because I saw no necessity for the investigation of a subject we are all more or less familiar with. At that time I suggested that the proper course was for the two Judiciary Committees of the Legislature to perfect the pending Anti-Trust bill. I offered to take my name from the bill if that stood in the way of its acceptance.

What is the result? After six weeks' delay, and the probable expenditure of from \$15,000 to \$20,000 of the State's money, the bill in question is determined upon as the proper one, but being too drastic it is amended in almost the same way proposed last year.

It is to be regretted that the investigation did not disclose something of which we were not previously aware, and that the report does not point some way out of the wilderness. The way is simple, but it would seem that Mr. Lexow has no intention of allowing it.

FREDERICK A. ROBBINS,

Assemblyman from Allegany County.

ALBANY, N. Y., March 9.—The report of the Lexow Trust Investigating Committee, which was presented to the Legislature to-day, was a great disappointment in at least one respect—to those who last year urged the enactment of an effective anti-trust law. These gentlemen, prominent among them being Senator Cantor and Assemblyman Robbins, declare that the remedy proposed by Mr. Lexow is an enunciation rather than an elaboration of the Anti-Trust bill which Governor Morfitt killed last Spring.

As an essay on the subject of trusts in its true distinction between a meritorious combination of capital intended to develop enterprises and a pernicious aggregation of wealth, having for its object the control of product and market, in its optimization of the trust laws and its review of the important court decisions, the report is thought to be extremely creditable. No one quarrels with Mr. Lexow for the vigorous way in which he points out the methods of corporate rapacity, and nearly every one admits that his treatment of the subject until he reaches the discussion of remedial legislation, is worthy of a professor of political economy.

That Supreme Court Criticism.

Up to that point the report is evidently the work of Mr. Lexow, unfettered by the mandates of a boss. From that point the document possesses all the earmarks of the machine, which in some strange manner permitted a criticism of the United States Supreme Court to creep in.

As the Chicago platform was loudly denounced because it suggested the propriety of the Supreme Court reversing itself on the income tax decision, the Democrats expect to find some diversion in calling attention to

the fact that the Lexow report is guilty of the same offence. It says that the Supreme Court's definition of the Sherman Anti-Trust law is "narrow," and that until the court broadens on this point, no relief through Federal enactment can be secured to the people.

This is most interesting, however, as an exemplification of the adage regarding opinion over the going of different omen. The vital weakness of Lexow's report, according to his critics, lies in his conclusions. It is asserted that if Mr. Lexow introduces the bill he has outlined in his report, it will be as ineffective as was the one of last year, when Attorney Boardman's amendment was incorporated.

Last Year's Anti-Trust Bill.

It will be recalled that the original bill prepared by the Attorney-General at the request of the Republican Legislature, provided that the Attorney-General should be empowered to summon witnesses and secure books and papers bearing on the existence of a trust. The Attorney-General, or the commissioner he might designate, was to make a searching inquiry, so that he might collect evidence upon which to base a suit.

Mr. Lexow now proposes to throw obstacles in the way of the Attorney-General's learning about the facts about trusts. Last year he was not permitted to use the facts as a basis for prosecution. This year Mr. Lexow proposes to make it almost impossible for him to do so.

According to Mr. Lexow all the subpoenas issued by the Attorney-General must be countersigned by a Supreme Court Judge. All testimony subsequently taken must be taken by a Supreme Court Judge, and the rules of evidence must govern, and the preliminary inquiry to be conducted by the Attorney-General a judi-

Salient Points of the Report Made by the Lexow Trust Committee.

ALBANY, March 9.—The following are the main features of the majority and minority reports of the Lexow Trust Investigating Committee. The majority report says:

"It was the aim of your committee to pursue its investigations with the strictest impartiality and fairness, but with the determination to elicit all the facts necessary to secure a complete disclosure of the economic systems which came under our observation. It should be borne in mind that those whom we examined were almost without exception officers in the control and management of the respective combinations; that consequently they proved to be reluctant witnesses, desirous of evading direct answers.

"Without going into unnecessary details as to the origin and development of particular combinations, we may generalize the situation in this way:

The Combinations' Power.

"In every case of combination which presented itself to your committee, independent concerns, represented either by partnerships or by corporate organizations, or both, had been competing against each other in the markets of this State and nation, when, by promotion or otherwise, they were combined together generally under the laws of the State of New Jersey into one large organization, controlling approximately 80 per centum of the production of a particular product of common use.

"Every combination thus made was accompanied by an enormous capitalization and was generally followed by a purposeful effort to distribute its stock to the public through the channels of speculation. Every such combination was followed by the closing and dismantlement of factories, the discharge of laborers and the concentration of the business of many separate organizations into a few of the many factories controlled by the combination. Every such combination was followed by the substantial control of product and by the ability of the combination to fix a price upon its own product as well as on that of ostensible competitors.

"Every such combination was followed by a system of factors' agree-

ment to maintain a fixed price without regard to the normal rules of supply and demand. Finally, every such combination was followed by increasing difficulties of new competition by lesser capital and increased ability to destroy or absorb any existing competition or new competition that might arise.

No Lower Prices Followed.

The main advantage is stated to be that of economy in production reflected in lower prices to the consumer. The fact that large economies must of necessity accrue admits of no denial. But are these followed by lower prices to the consumer? We find nothing in the record to justify any such conclusion. The record shows that a combination controlling eighty per cent of a staple product, hence a purchaser of eighty per cent of the raw material, should and did exert substantial influence upon the price of raw material and could by dint of that influence force down the price of the raw material to a point which enabled it to appear as having decreased the price of the finished product to the consumer.

"Another advantage which is said to flow from combination is that of a more perfect product. There is nothing upon the record to justify this conclusion. Another advantage is alleged to be that of better wages and more constant employment of laborers. We are equally unable to reach this conclusion. Still another alleged advantage is that of stability of price to the consumer. This must be admitted, but the question is whether the fixing of a stable price operates to his advantage.

Capital Stock Overissued.

"Another incident worthy of mention relates to the system of capitalization which seems to lie at the foundation of this class of combinations. Sufficient appears upon the record to justify the conclusion that of at least co-ordinate importance with the plan of industrial concentration was the issue of stock certificates of greatly inflated nominal values. That this was a purpose definitely formed and not merely incidental to industrial development is substantially admitted by the promoters at least two of the principal combinations.

of capital stock were an important, if not the main, purpose of consolidation.

"We cannot at this time suggest a remedy other than of restriction in the issue of capital stock by limiting the amount of issue, or requiring, as in the case of mortgage institutions, its absolute payment in cash, may be altogether too radical.

Got Lower Taxation.

"A point of interest which came to light incidentally is the practice of foreign incorporation. It appeared from the testimony that in one case lower rates of taxation were the moving cause, in another the desire to avoid legislative inquiry or the political powers of the State. In a third, the absence of all requirements as to annual reports. But whatever the grounds, real or pretended, the fact remains that the mere incorporation in a foreign jurisdiction is supposed to operate so as to relieve the corporation.

"The laws of this State are as liberal in the treatment of corporate interests as they should be made consistently with the rights of the public and the ordinary requirements of honest management and it seems to us to be far better for this State to continue its policy of reasonable regulation and proper scrutiny of the affairs of corporations, trusting that, with such light upon the subject as experience may shed, all other States will impose the same measure of restraint in a foreign jurisdiction is supposed to operate so as to relieve the corporation.

"Time did not permit of an extended inquiry into the system of 'factors' agreements.' But the light that has been shed upon it justifies the conviction that the system thus established places convenient agencies at the disposal of combinations with monopolistic tendencies to secure just that control over the distribution of products which has led to a practically exclusive control of the producing capacity of the nation, and enables them arbitrarily to fix and maintain the price of the product to the people. This is the last link in the completed chain, and an integral part of the whole scheme, which, in some respects, clinches the system and makes monopoly permanent by rendering competition impossible.

Trade Is Restrained.

"It is unnecessary to argue at length that such a system has been formed for the express purpose of controlling within a fraction of the entire product represented by brands with the original competing concerns have, under conditions of free competition, pushed into the market and popularized with the people until they have under one name or another become necessary to public comfort, convenience and enjoyment, destroying by combinations that competition and operating by the absence of all requirements as to annual reports. But whatever the grounds, real or pretended, the fact remains that the mere incorporation in a foreign jurisdiction is supposed to operate so as to relieve the corporation.

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"They, moreover, establish a commercial system clearly in restraint of trade; one which if permitted to continue would result in the establishment of moderate capital and lesser means from all opportunity of practical competition.

In determining the nature and scope of the remedies to be applied we are met at the outset by the difficulty that combinations are not their very nature over the whole or a very large portion of the territory of the Union. Distinct acts of oppression or repression committed in other jurisdictions cannot be successfully attacked by local authority. No State law will operate extra-territorially, nor may we bring within the scope of our punitive power any acts committed in other jurisdictions.

"It is obvious that the Federal courts have placed so narrow a construction upon the limits of their authority that, in the absence of a constitutional amendment, little or no relief may be expected from that quarter unless the Supreme Court of the United States shall greatly modify its conclusions.

"It seems to us that the system here criticised can be satisfactorily corrected only by the exercise of a power of general jurisdiction throughout the United States, and that any attempt to prevent the evil by local legislation assailing a system of general application in all the States must prove abortive, or, at least, insufficient.

State Policy Should Stand.

"We can find no valid reason for any de-

parture from the policy of the State in the combinations. It is because of the indubitable fact that the cause of combinations herein criticised acts as a barrier to the free employment of capital in individual control, or in moderate and normal association, which upon the State the duty of exercising any prohibitive and punitive authority it may possess to check the former. So far as the criminal jurisdiction of the State may be involved, the law can reach effectively only specific acts of oppression, or specific acts in restraint of trade committed within its jurisdiction.

"It may be advisable on the granting of corporate charters to impose limitations upon the volume of stock to be issued, but in the absence of similar provisions in the laws of other States a discrimination would exist, injuriously affecting domestic corporations.

As to foreign corporations—provision should be made to remove the inequalities which now exist between domestic and foreign corporations transacting business in this State. Our corporations have a right to expect that there shall be no discrimination against them and in favor of foreign corporations having the protection of our laws and the freedom of our business and commercial opportunities. Inequalities in taxation should be removed, and foreign corporations should be compelled to comply with all those provisions of the local law governing domestic corporations which are of general application and which are not of a punitive character.

Could Take Away Licenses.

"As to foreign corporations, provision may be made for the refusal or revocation of licenses to transact business in this State. But that would seem to be too radical a remedy in the absence of a poor judicial determination that a monopoly in fact exists. Another suggestion which should, however, be carefully considered would be to invest the courts, under proper restrictions, with the right to maintain a civil action against any capitalistic monopoly, conferring upon the Supreme Court in an action of that character the authority to issue an injunction against such corporations and its agents, prohibiting the continuance in this State of acts or the transference of business under the existing legislation, with the addition suggested in the bill submitted, appears to us to be ample. An important difficulty seems to be that of securing the

testimony necessary to a judicial ascertainment of the act itself.

"This may be obviated by investing the Attorney-General with ample power for the examination of witnesses under subpoena to be issued on his application by a Justice of the Supreme Court, conferring the constitutional guarantee of absolute immunity of those testifying, providing that such examination shall be had in the presence of a Justice, and shall be conducted pursuant to the usual rules governing the admission of evidence to be applied by such Justice, the testimony when taken to be filed in the office of the Attorney-General. It seems to us that all the authority that the Legislature may confer upon the prosecuting officer of the State is warranted.

Field Free to All.

"In concluding this report we deem it proper to refer to the declaration made by some of the witnesses before us that competition was ruinous to legitimate enterprise and was becoming obsolete. There was no attempt to conceal the purpose of controlling or regulating competition by combination.

Political oppression is the refusal of equal rights to commercial oppres-

sion; both are repugnant to the people. The field should be free to all. No one interested should be permitted by unfair and oppressive methods to build an impregnable trocha around any industrial establishment and rest its claims to special privilege on abuse of power of concentrated wealth of abnormal magnitude.

McCarren Stands by Sugar.

Senator McCarren, who represents the Brooklyn sugar house district, says in his report:

"I dissent from the findings and conclusions of the majority of the committee in so far as they relate to the American Sugar Refining Company. The testimony elicited on the investigation shows that prior to the organization of the American Sugar Refining Company a number of so-called independent refineries were engaged in the refining of sugar, and in many instances, by reason of competition, were reduced to a condition of

SHADE OF THE ORIGINAL BOSS: "Now, if I had only thought of that when I was 'Boss!'"

cial proceeding, which may be as interminable as the supplementary proceedings provided for on the statute books now. In other words, when it is admitted that an unusual state of affairs requires an unusual method of procedure, Mr. Lexow proposes to open the way for endless delay before even a suit is commenced.

A Peculiar Loophole.

Another peculiar point Mr. Lexow's report makes is that a witness testifying must be granted "absolute immunity." Legislators are extremely anxious to find out just what Mr. Lexow means by this. Earlier in the session it was stated that immunity from criminal prosecution was not sufficient protection for a witness in an inquiry by the Attorney-General, and the witness should be protected civilly.

If "absolute immunity" means that an owner of a trust cannot be prosecuted criminally and must not have his holdings in the trust depreciated in value by the dissolution of the trust, it would seem that Mr. Lexow's bill would have the effect of throwing safeguards around trusts and their officers, rather than the effect of exposing them to the rigors of the law.

The bill or bills referred to in the report were not ready for presentation to-day, but will probably be introduced to-morrow or the next day. The report and these bills were made a special order for next Tuesday, when the formal ending to the inquiry will be fully ventilated in the Senate.

Mr. Robbins has already determined upon his programme. When the bill comes up for discussion before the Assembly he will move to substitute the bill of last year and will release the episode from beginning to end. All testimony subsequently taken must be taken by a Supreme Court Judge, and the rules of evidence must govern, and the preliminary inquiry to be conducted by the Attorney-General a judi-

Hope in Rural Legislators.

There is a bare possibility that Mr. Robbins may gain his point. While the rural members are machine men and reserve Mr. Platt as a great and a good man, they object to trusts because their constituents object to trusts and are likely to protest against being "delivered" on such an im-

portant matter against the interests of the people they represent.

No one was surprised at Senator McCarren's action in presenting his peculiar minority report. McCarren's district in Brooklyn contains the Sugar Trust's refineries, and the Democrats objected to his appointment to the committee when Senator Frank Gallagher resigned.

Lieutenant-Governor Woodruff knew quite exactly that McCarren's admission that he was an open secret that the Democratic assignment was intended to preclude the possibility of

declared that it did not represent the minority in the Legislature of the party.

This action was a reaffirmation of Senator Cantor's statement when the Lexow report was introduced. In the Senate, after the introduction of bills was concluded, this afternoon, Senator Lexow asked consent to submit his report. He also said that the bills which were to have accompanied the report would be ready within a few days.

It is now proposed to make the Attorney-General's investigation for the purpose of securing evidence a court proceeding, governed by the legal rules of evidence and subject to all the quibbles, wrangles and delays of the law. Mr. Lexow's amendment, as he describes it in his report, will simply have the effect of defeating the very object we have sought to attain.

This entire affair has been a piece of political humorism intended to deceive the public. The lame conclusions of the distinguished committee and the obstacles to an effective law suggested by it, prove the hollowness of the entire proceeding. I cannot see how the Legislature, after last year striking out the amendments intended to cripple the bill, can this year consent to them.

JACOB A. CANTOR,

Senator from New York.

Senator McCarren then introduced his minority report, signed only by himself. Assemblyman Barry, the other Democratic member of the committee, will make a report later, and this will be the official attitude of the Democrats in the Senate.

Senator Cantor asked that Mr. McCarren make a brief statement explaining his report. Mr. McCarren said that his report was quite brief and could be read by the clerk, who was directed to do so.

Only McCarren's Opinion.

"I merely wish to say," said Mr. Cantor, at the conclusion of the reading, "that Mr. McCarren is the only signer of this report, which is merely an explanation of his personal views. His appointments were not desired by the Democrats, certainly not asked

McCarren is disowned.

Democratic Senators in Caucus Repudiate His Sugar Trust Defence.

ALBANY, N. Y., March 9.—At their caucus held late this afternoon, the Democrats repudiated Senator McCarren's report. They

for. His report does not in any sense reflect the attitude of the minority in the Legislature of the party in this State. The Democratic party neither apologizes for nor defends trusts."

Fearful that the ideas of the Democratic majority might be misconstrued, a call for a caucus was circulated and signed, and when the Democratic Senators met in the library, thirteen of the fourteen members were present. Senator Grady was the absentee. For almost two hours behind closed doors, the situation was discussed. There was some very plain speaking, and Senator McCarren was practically read out of the party by the adoption of the following resolution:

"Resolved, That the Democratic members of the Senate of the State of New York in caucus dissent in the most emphatic manner from the minority report of the Senate Sub-Committee on Trust Legislation submitted by Senator McCarren, and do the prompt passage of effective anti-trust legislation."

Senator Cantor at the outset explained that Senator McCarren misrepresented the party in his report. Mr. McCarren said that he represented himself. Mr. Cantor replied that McCarren necessarily represented the Democratic party on such a committee, and that it was the duty of the caucus to repudiate the Brooklyn Senator's action.

"I don't care what action this caucus takes," replied Senator McCarren. "I am right as an individual to express my opinion."

Rebuked by Coffey.

"You were there in a representative capacity," said Senator Coffey. "Why did you not consult with your colleagues? Your report is a clearing certificate for the Sugar Trust. You have apparently delivered up the party to the trusts after its years of fight against them."

Senator McCarren insisted that he spoke as an individual in his report. He became involved in an altercation with Senator Guy and said to the latter: "You're in a fine position to talk about irregularity. You've broken away from your own organization—Tammany."

"I at least agree with the majority of voters," said Senator Guy. "If only I differ with the leaders, while you differ with both the voters and the leaders and agree only with the Tammany machine."

Senator Koehler voted against the resolution at first, but on finding he was alone, he changed his vote to the affirmative. Senator Frank Gallagher was disposed to be friendly toward Mr. McCarren, but the sentiment against the latter was too strong. Senator McCarren declined to vote on the resolution.

McCarren stands by sugar.

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insolvency and bankruptcy, and during the existence of these so-called independent refineries the price of sugar to the consumer was on an average of about 30 per cent higher than it is to-day, which shows that the existence of the American Sugar Refining Company has resulted in reducing the price of sugar to the consumer about 30 per cent, and has prevented that demoralization in the industry of refining sugar that formerly disturbed the financial affairs of such enterprises."

The testimony also shows that in the aggregate a greater number of men have been employed in the sugar industry since the formation of the American Sugar Company than were prior to its existence, and that the labor employed has been better paid.

"In my opinion, the presence of the American Sugar Refining Company, and the location of its plant in the State of New York, have resulted in developing our commerce, increasing our taxable property and benefiting our people."

Field Free to All.

"In concluding this report we deem it proper to refer to the declaration made by some of the witnesses before us that competition was ruinous to legitimate enterprise and was becoming obsolete. There was no attempt to conceal the purpose of controlling or regulating competition by combination.

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CARTOON FIGHT BEGINS TO-DAY.

Labor Will Enter a Vigorous Protest at the Senate Hearing.

INJURY TO WORKINGMEN.

The Passage of the Ellsworth Bill Would Throw Many of Them Out of Employment.

MACHINE MEN ARE CONFIDENT.

They Expect the Measure Will Be Passed Before the Week Is Ended, but Their Opponents Are Not Disheartened.

ALBANY, N. Y., March 9.—The hearing to-morrow at 3 o'clock before the Senate Committee on Codes on Senator Ellsworth's bill, which provides that there can be no publication of any portrait or cartoon of any person without first obtaining the written permission of the person who is portrayed or cartooned, promises to be an interesting event for the members of the Republican machine who are determined that no more shall be depicted the schemes of the men who bear toward the people the same relation that Boss Tweed did when Nod by his cartoons showed the manner in which the people were being robbed and defied.

Organized labor has taken a hand in the opposition to the bill, and will be represented by able counsel at the hearing. The men who earn their living by work at the trades and professions which are supported by the pictorial publications have denounced the bill and the men who are behind it, and propose to tell the members of the Senate committee of the injury they will work by enacting into law the measure which Senator Ellsworth was coaxed into introducing after two other Republican leaders had refused to have anything to do with it.

Former Representative George Baines, of Rochester, and Thomas S. Fagan, of Troy, have been engaged in the interest of organized trades to appear before the Senate committee to-morrow afternoon and tell the committee the wrong they will perpetrate if the bill is not killed in the committee. They will recount the injury that the bill will do to the artists, the engravers and others whose daily bread is earned in the preparation and the publication of the pictures and engravings which have done so much to raise the standard of the magazines and the newspapers of the day.

Workmen Will Give Facts.

Messrs. Baines and Fagan are lawyers who knew the value of newspapers and magazines as moral agents. Both achieved a high passing fame as counsel for the people in the trial of the indictment against "But" Shea, who was charged with the murder of Robert Ross at an election in Troy. To the newspapers may be attributed the dissemination of knowledge of the causes which led to the crime and led to many reforms in election procedure. From that trial and publication of its proceedings came the "Baltimore Sun" which was the Black, who is now Governor of the State and who is said to secretly favor the passage of the bill.

The bill is likely to be enlightened on many phases of the question which have been treated so hurriedly and eagerly. Messrs. Baines and Fagan are men of high position in the labor organizations there will be a number of direct representatives of the workmen and artists who will give the facts and figures showing the extent of the injury the bill will accomplish.

Several Senators, representing the machine idea, assert that the hearing will be quickly disposed of and that the bill will pass. They say that the bill will be passed in the Senate before the week is ended. Notwithstanding these statements it is believed that the bill will be found enough Senators who do not fear the Platt scale to defeat the bill.

Dry Dock Testing Delayed.

Another delay in turning over the new dry dock at the Navy Yard to the Government authorities has been occasioned by the non-appearance of the monitor Puritan. The Puritan was expected to arrive yesterday from Charleston, which port she left on Saturday last. Up to that time she had not been sighted, and, in consequence, the trial of the dock had to be postponed.

WELL, WHO IS LEXOW?

Attorney-General McKenna Only Remembers with an Effort the Nyack Statesman and His Work.

Washington, March 9.—"Who is Lexow?" is what the head of the Department of Justice wants to know. Judge McKenna, the new Attorney-General, who took office yesterday, is a man who is not familiar with the findings. The judge is a thin, little man, weighing perhaps 130 pounds, with sharp features and a keen expression. Taking the telegram in both hands he held it under the light and then inquired: "Well, who is Lexow?"

He was reminded briefly of the work of Lexow and Dr. Parkhurst with the police force of New York City. Then a light dawned in Judge McKenna's eye and he replied:

"Yes, I do have a faint recollection of something of that kind going on in New York some time ago." Looking again at the telegram, he added: "I have been in office about twenty-four years, and have spent most of my time getting broken in to give my opinion on Lexow's report off hand, but I will warrant this matter will stand before you with time and quite satisfactorily, too. Come to me again, and I can give you an opinion I will gladly do so."

He have no defined policy to announce. The Republican platform contains several declarations regarding trusts, and all I say is that the platform will be faithfully executed."

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